

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #01-375(APCB)

DEVELOPMENT OF NEW RULES CONCERNING EMISSION CONTROL LIMITS FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATORS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule to establish control limits for commercial and industrial solid waste incinerator units for which construction commenced on or before November 30, 1999. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 11-8.

AUTHORITY: IC 13-4-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

This rule incorporates federal air emission requirements for solid waste incinerators that burn commercial and industrial waste. On December 1, 2000, U.S. EPA published a final rule establishing new source performance standards (NSPS) for new sources and emission guidelines for existing sources (65 FR 75338). New units are those that commenced construction after November 30, 1999 or commenced reconstruction/modification on or after June 1, 2001. Existing sources are those that commenced construction before November 30, 1999. Section 129 of the Clean Air Act (CAA) requires U.S. EPA to use maximum achievable control technology (MACT) in developing these standards.

Federal law requires states to adopt requirements at least as stringent as the federal emission guidelines for CISWI units. IDEM initiated this rulemaking to establish emission standards consistent with those of U.S. EPA's final rule. This rule will provide the legal mechanism to implement the emission guidelines and will be part of the state plan that IDEM will submit to U.S. EPA for approval, as required by Sections 111(d) and 129 of the CAA.

The federal rule applies to units of all sizes whose primary purpose is the incineration of commercial and industrial nonhazardous solid waste. This rule does not apply to units that recover energy generated from the combustion process. Air curtain destructors/incinerators are also regulated by this rule. However, as long as the air curtain destructor/incinerator is burning one hundred (100%) wood waste, clean lumber, and/or yard waste, the unit needs to only comply with an initial and subsequent annual opacity test.

The following types of incinerators are exempt from this rule:

- Pathological waste
- Agricultural waste
- Municipal waste combustors
- Medical waste
- Small power production units

- Cogeneration units
- Hazardous waste
- Metal recovery units
- Rack, part, and drum reclamation units
- Cement kilns
- Chemical recovery units
- Laboratory analysis

Many of these sources are exempt because they are regulated by other federal regulations or will be regulated in the future.

The exemption for pathological waste incinerators, agricultural waste incinerators, and municipal waste combustion units is conditioned upon the source meeting notification and record keeping requirements. The owner or operator of the unit is required to notify IDEM that the unit qualifies for the exemption and keep records on the amount of applicable waste burned in the unit. Incinerators burning more than ninety percent (90%) or more by weight of pathological waste, low level radioactive waste, and/or chemotherapeutic waste are exempt. Crematories or units burning animal remains would be considered pathological incinerators. Incinerators burning ninety percent (90%) or more by weight of agricultural waste are exempt. The notification requirement for municipal combustors applies to smaller units not already subject to a 129(d) solid waste combustion rule. It applies to units burning more than thirty percent (30%) municipal solid waste, such as an incinerator at a retail store.

The federal rule establishes emission limits for cadmium (Cd), carbon monoxide (CO), dioxins and dibenzofurans (dioxins/furans), hydrogen chloride (HCl), lead (Pb), mercury (Hg), opacity, oxides of nitrogen (NO_x), particulate matter (PM), and sulfur dioxide (SO₂). The rule also establishes requirements for operator training and qualifications, waste management plans, and testing and monitoring requirements. The waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. An initial stack test is required for all pollutants with emission limits and annual stack tests are required for PM, HCl, and opacity. Sources have several options on how they can comply with this rule. Sources are also required to continuously monitor operating parameters to ensure continuous compliance with the emission limits. Units not operating pursuant to a Title V permit will be required to submit an application for a Title V permit within one (1) year from the effective date of this rule, or December 1, 2003, whichever is earlier.

IDEM is currently developing an inventory of affected sources. IDEM estimates that there are about ten (10) to twenty (20) affected CISWI sources in Indiana that must comply with all the applicable requirements of this rulemaking. Additionally, thirty (30) to forty (40) air curtain incinerators in Indiana will be subject to the opacity requirements. Many sources will be required to notify IDEM that they are exempt from this rule and some will need to keep records to prove they are exempt.

In lieu of compliance with the rule, sources may choose to shut down and use other waste disposal options, such as sending waste off-site to a commercial incinerator. Most incinerators, excluding the air curtain incinerators, that continue to operate will need to install add-on air pollution control devices to meet the emission limits. Although the rule does not require the use of a specific type of control device, the MACT emission limits were determined based on the performance of wet scrubbing systems on CISWI units.

Sources have two options for compliance dates. The first option is to come into compliance or shut down within one year after the effective date of this rule. The second option gives an extended compliance deadline if the source complies with two (2) increments of progress. The first increment requires the source to submit a final control plan to the state describing what air pollution controls or process changes will be made in order to meet the emission limits. The second increment is achieving final compliance, which means if the unit is brought online, all necessary process changes and air pollution control devices would operate as designed. The source has one hundred eighty (180) days after final compliance to conduct the initial performance test. Sources are required to meet the emission limits on the date the initial performance test is required or completed, whichever date is earlier.

IDEM is seeking comment on the compliance dates for the two (2) increments of progress included in the draft language. The CAA requires that the date for final compliance can be no later than three (3) years after the effective date of the state plan approval or December 1, 2005. In this proposed rule IDEM has selected the dates for submission of the final control plan to be one (1) year after the effective date of the rule and the date for final compliance to be September 1, 2005. The date for final compliance was based on an estimate of when the state plan would be effective. IDEM has selected compliance dates based on the effective date of the state rule and not the U.S. EPA approved date of the state plan.

FINDINGS

The commissioner of IDEM has prepared written findings regarding this rulemaking on commercial and industrial solid waste incinerators. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) The rulemaking policy alternatives available to the department are so limited that the public notice and comment period under IC 13-14-9-7 would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule. The federal rule requires that the department develop rules to incorporate the emission guidelines contained in 40 CFR 60, Subpart DDDD. The only issue for which Indiana has some discretion is the compliance date. IDEM believes this notice and subsequent comment periods provide sufficient opportunity for public input on this point.

- (2) The rulemaking is an incorporation of federal guidance that has already gone through a rigorous public comment process.
- (3) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (4) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#01-375(APCB) Commercial and Industrial Waste Incinerators
Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by December 3, 2001.

Technical information regarding this action may be obtained from Susan Bem, Program Planning and Policy Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 extension 3-5697 (in Indiana). Additional general information regarding this action may be obtained from Gayla Killough, Rules Development and Outreach Section, Office of Air Quality, (317) 234-1377 or (800) 451-6027, extension 4-1377 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 11-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Commercial and Industrial Solid Waste Incinerators

326 IAC 11-8-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) Except as provided in subsections (b), (e), (f), and (g), this rule applies to each commercial and industrial solid waste incinerator (CISWI) unit for which construction was commenced on or before November 30, 1999.

(b) The following are exempt from this rule:

(1) Incineration units burning ninety percent (90%) or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000) are not subject to this rule, provided the owner or operator of the incinerator does the following:

(A) Notifies the department and U.S. EPA that the unit meets these criteria.

(B) Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes burned, and the weight of all other fuels and wastes burned in the unit.

(2) Incineration units burning ninety percent (90%) or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2875, 65 FR 75338 (December 1, 2000) are not subject to this rule, provided the owner or operator of the incinerator does the following:

- (A) Notifies the department and U.S. EPA that the unit meets these criteria.
- (B) Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.
- (3) Incineration units that meet either of the following criteria:
 - (A) Municipal waste combustors regulated under 40 CFR 60, Subpart Ea*, Eb*, AAAA (65 FR 76350 (December 6, 2000))* , or BBBB (65 FR 76378 (December 6, 2000))*.
 - (B) Burn greater than thirty percent (30%) municipal solid waste or refuse-derived fuel, as defined in 40 CFR 60 Subpart Ea*, Eb*, AAAA (65 FR 76350 (December 6, 2000))* , and BBBB [65 FR 76378 (December 6, 2000)]* , and that have the capacity to burn less than thirty-five (35) tons (thirty-two (32) megagrams) per day of municipal solid waste or refuse-derived fuel, provided the owner or operator of the incinerator does the following:
 - (i) Notifies the department and U.S. EPA that the unit meets these criteria.
 - (ii) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.
- (4) Medical waste incineration units regulated under 40 CFR 60, Subpart Ec* or Ca*.
- (5) Small power production units that meet all of the following requirements:
 - (A) The unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C))*.
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.
 - (C) The owner or operator notifies the department and U.S. EPA that the unit meets all of these requirements.
- (6) Cogeneration units that meet all of the following requirements:
 - (A) The units qualifies as a cogeneration facility under Section 3(18)(C) of the Federal Power Act (16 U.S.C. 796(18)(C))*.
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.
 - (C) The owner or operator notifies the department and U.S. EPA that the unit meets all of these requirements.
- (7) Hazardous waste combustion units that meet either of the following criteria:
 - (A) Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act*.
 - (B) Units regulated under 40 CFR 63, Subpart EEE*.
- (8) Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.
- (9) Cyclonic barrel burners.
- (10) Rack, part, and drum reclamation units.
- (11) Cement kilns regulated under 40 CFR 60, Subpart LLL*.
- (12) Sewage sludge incinerators regulated under 40 CFR 60, Subpart O*.
- (13) Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The following types of units are considered chemical recovery units:
 - (A) Units burning only pulping liquors that are reclaimed in a pulping liquor recovery process and reused in the pulping process.
 - (B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.
 - (C) Units burning only wood or coal feedstock for the production of charcoal.
 - (D) Units burning only manufacturing byproduct streams or residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.
 - (E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.
 - (F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for the use in other manufacturing processes.
 - (G) Units burning only photographic film to recover silver.
- (14) Laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis.
- (c) Exemption notifications required under subsection (b) are due one (1) year from the effective date of this rule.
- (d) Pathological waste exemptions submitted under 326 IAC 11-6 satisfy the conditions of subsection (b)(1).

(e) Air curtain incinerators or destructors, only burning one (1) or more of the following materials, are required to comply with 40 CFR 60.2810 through 40 CFR 60.2870, 65 FR 75338 (December 1, 2000) and obtain approval under 326 IAC 4-1-6:

- (1) One hundred percent (100%) wood waste.
- (2) One hundred percent (100%) clean lumber.
- (3) One hundred percent (100%) mixture of only wood waste, clean lumber, yard waste, or any combination of these wastes.

(f) If the owner or operator of a CISWI unit makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to 40 CFR 60, Subpart CCCC, 65 FR 75338 (December 1, 2000)* and 326 IAC 12, and this rule no longer applies to that unit.

(g) Physical or operational changes made to an existing CISWI unit primarily to comply with emission limits under this rule are not considered modifications or reconstructions and do not result in an existing CISWI unit becoming subject to 40 CFR 60, Subpart CCCC, 65 FR 75338 (December 1, 2000)*.

*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 11-8-1*)

326 IAC 11-8-2 Requirements; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The air pollution control board incorporates by reference the following provisions of 40 CFR 60, Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999, 65 FR 75338 (December 1, 2000)*:

- (1) 40 CFR 60.2575 through 40 CFR 60.2615 Increments of Progress.
- (2) 40 CFR 60.2620 through 40 CFR 60.2630 Waste Management Plan.
- (3) 40 CFR 60.2635 through 40 CFR 60.2665 Operator Training and Qualification.
- (4) 40 CFR 60.2670 through 40 CFR 60.2685 Emission Limitations and Operating Limits.
- (5) 40 CFR 60.2690 through 40 CFR 60.2695 Performance Testing.
- (6) 40 CFR 60.2700 through 40 CFR 60.2705 Initial Compliance Requirements.
- (7) 40 CFR 60.2710 through 40 CFR 60.2725 Continuous Compliance Requirements.
- (8) 40 CFR 60.2730 through 40 CFR 60.2735 Monitoring.
- (9) 40 CFR 60.2740 through 40 CFR 60.2800 Record Keeping and Reporting.
- (10) 40 CFR 60.2805 Title V Operating Permits.
- (11) 40 CFR 60.2810 through 40 CFR 60.2870 Air Curtain Incinerators.
- (12) 40 CFR 60.2875 Definitions.
- (13) 40 CFR 60 DDDD Table 1 through 5.

(b) In 40 CFR 60.2575 through 40 CFR 60.2875, 65 FR 75338 (December 1, 2000), “you” means the owner or operator of a CISWI unit.

(c) The compliance dates for the requirements in 40 CFR 60 DDDD Table 1, 65 FR 75338, (December 1, 2000)*, increments of progress, are as follows:

- (1) The compliance date for Increment 1–Submit Final Control Plan shall be one (1) year from the effective date of this rule.
- (2) The compliance date for Increment 2– Final Compliance shall be September 1, 2005.

(d) If a source does not submit a final control plan, the compliance date is one (1) year from the effective date of this rule.

(e) The date of closure included in the closure notifications required by 40 CFR 60.2615, 65 FR 75338 (December 1, 2000) and 40 CFR 60.2865, 65 FR 75338 (December 1, 2000) shall be no later than one (1) year from the effective date of this rule.

***These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 11-8-2)**

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on February 6, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on a new rule concerning commercial and industrial solid waste incinerators.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the draft new rule concerning commercial and industrial solid waste incinerators. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Technical information regarding this action may be obtained from Susan Bem, Program Planning and Policy Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 extension 3-5697 (in Indiana). Additional information regarding this action may be obtained from Gayla Killough, Rule Development Section, Office of Air Quality, (317) 234-1377 or (800) 451-6027, press 0, and ask for 4-1377 (in Indiana). If the date of this hearing is changed, it will be notice in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality